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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/284,862	04/22/1999	HIROYUKI KURIYAMA	500.37156XOO	2908

20457 7590 10/06/2003

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EXAMINER

SIEFKE, SAMUEL P

ART UNIT	PAPER NUMBER
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1743

DATE MAILED: 10/06/2003

26

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/284,862

Applicant(s)

KURIYAMA ET AL.

Examiner

Samuel P Siefke

Art Unit

1743

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 September 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,5,6,10,12 and 15-17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,5,6,10,12 and 15-17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s) _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other:

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
 2. Ascertaining the differences between the prior art and the claims at issue.
 3. Resolving the level of ordinary skill in the pertinent art.
 4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
9. Claims **1,5,6,10,12,15-17** are rejected under 35 U.S.C. 103(a) as being unpatentable over Kanamori (USP 5,232,081) in view of Ishibashi (5,087,423).

Kanamori teaches an modular analyzer system comprising a specimen rack 18, a specimen introducing part 10, a specimen rack conveying parts 12a, 12b, a storage part for storing the specimen 14 and three different analyzers 21, 22, 24. The introducing part, the storage part Y4 and the analyzers are independent of each other and coupled to one another by means of the specimen rack conveying part in the rear of the analyzers (column 6, line 37- column 7, line 19, Fig. 7), the analyzers each comprising sampling means. Kanamori teaches a reexamining buffer 60 for temporarily holding a specimen after analysis is complete by analyzer

Art Unit: 1743

The reexamining buffer is located between the specimen introducing part 10 and the storage part for storing the specimen 14. Given the teaching of the modular system of Kanamori, it would have been obvious to one of ordinary skill that the independent units are equal in height and depth, so that it is possible to avoid the high cost that would arise from special ordering an entire analyzing system.

Kanamori does not disclose the use of a specimen rack conveying part for reciprocally conveying the specimen rack to at least two analyzers. Ishibashi does teach the use of a specimen rack conveying means comprising separate conveying paths 76a, 79a, 80 and 84 for conveying the specimen racks in different directions (column 8 line 43- column 9, lines 36, Fig.

Additionally, Ishibashi teaches that each analyzer includes a take-in buffer 77a, 77b and a specimen rack discharge part 81, 82 (column 3, line 66- column 4, line 3).

Accordingly, it would have been obvious to one of ordinary skill in the art at the time of the claimed invention to have included in the analyzer system of Kanamori a specimen rack conveying means comprising separate conveying paths in order to quickly and easily distribute the samples to another analyzer in an effective manner if necessary.

With respect to claim 7, it has been held that matters relating to ornamentation, (i.e. slits) only which have no mechanical function cannot be relied upon to patentably distinguish the claimed invention from the prior art). See MPEP 2144.04 (I) and *In re Dembiczak*, 175 F.3d 994, 50 USPQ2d 1614 (Fed. Cir. 1999).

With respect to the specific heights and depths of the units recited in claims 5 and 12, one of ordinary skill in the art would have found it obvious to have provided the modular units of Wakatake with a particular height and depth, in order to optimize the ability of the average

Art Unit: 1743

observer to work at the units. Further, it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

Response to Arguments

Applicant's arguments filed 9/4/03 have been fully considered but they are not persuasive. Applicant argues "Kanamori and Ishibashi, either alone or in combination, do not teach or suggest a specimen introducing part, a specimen rack conveying part having an ongoing path and an incoming path, for reciprocally conveying the specimen rack received from the specimen introducing part, to and from at least two analyzing parts having different functions and having substantial equal widths." In the last Office action, it was stated that it would have been obvious to one of ordinary skill in the art at the time the claimed invention to have included in the analyzer system of Kanamori a specimen rack conveying means comprising separate conveying paths in order to quickly and easily distribute the sample to another analyzer in an effective manner if necessary. Motivation is provided and the combined prior art contains all the limitations of the current claims in the instant application.

Art Unit: 1743

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Samuel P Siefke whose telephone number is 703-306-0093. The examiner can normally be reached on M-F 7:00am-5:00pm.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill A. Warden can be reached on 703-308-4037. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

SPS



October 1, 2003


Jill Warden
Supervisory Patent Examiner
Technology Center 1700